

**M. STEPHEN JONES**  
County RecorderRECORDING REQUESTED BY:

City of Atwater  
750 Bellevue Road  
Atwater California 95301

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
Northern California Region  
8800 Cal Center Drive  
Sacramento, California 95826  
ATTN: Anthony J. Landis, P.E.  
Chief, Office of Military Facilities

**P Public****G**Doc#: **2007 - 008546**

<b>Titles:</b>	<b>1</b>	<b>Pages:</b>	<b>15</b>
<b>Fees</b>	<b>0.00</b>		
<b>Taxes</b>	<b>0.00</b>		
<b>Other</b>	<b>0.00</b>		
<b>PAID</b>	<b>\$0.00</b>		

(Space Above This Line For Recorder's Use Only)

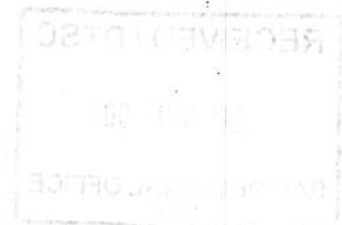
**COVENANT TO RESTRICT USE OF PROPERTY  
ENVIRONMENTAL RESTRICTION**

Re: Veteran's Park Parcel  
GROUNDWATER

This Covenant and Agreement (hereinafter Covenant) is made by and between the City of Atwater (hereinafter Covenantor or City), and the State of California (the State), acting by and through the Department of Toxic Substances Control (Department), and the Central Valley Regional Water Quality Control Board (Regional Water Board).

The State has determined that this Covenant is reasonably necessary to protect present or future human health and safety and/or the environment from potential risk related to the hazardous materials in the groundwater, as defined in California Health & Safety Code (H&SC) Section 25260, and enters into this Covenant in accordance with H&SC Section 25355.5 and California Civil Code Section 1471(c), and to protect waters of the State in accordance with California Water Code Division 7.

The Covenantor and the State, collectively referred to as the Parties, therefore intend that the use of the Property will be restricted as set forth in this Covenant.



## ARTICLE I

### STATEMENT OF FACTS

1.01 Property Description. The Property is Parcel C-1, commonly referred to as Veteran's Park (Property) of the former Castle Air Force Base, California, totaling approximately 18 acres and is more particularly described in Exhibit A and depicted in Exhibit B.

1.02 Existing Groundwater Contamination. Groundwater contamination originating from numerous sources across the former base is located on the Property. Monitoring data indicate the underlying groundwater is primarily contaminated by volatile organic compounds, trichloroethene, 1-2-dichloroethene at a depth of approximately 70 feet and more below ground surface. The regional direction of flow is approximately southwest.

1.03 Groundwater Remedial Action Underway. The Air Force is conducting a remedial action to remove contaminated groundwater at the Property in coordination with the United States Environmental Protection Agency (U.S. EPA), the Department, and the Regional Water Board. Groundwater is being remediated as part of the Comprehensive Basewide Record of Decision, part 2 (CB ROD, part 2, June 2006). Groundwater remediation is being achieved through a groundwater extraction and treatment program underway as part of the CB ROD, part 2. Complete delineation and full capture of all contaminated groundwater has been achieved as part of the CB ROD, part 2. The U.S. EPA, the Department, and the Regional Water Board concurred on the *"Demonstration of Remedial Action Operating Properly and Successfully,"* dated November 2003. The Air Force is responsible for meeting the requirements for the groundwater remedy in accordance with the CB ROD, part 2.

1.04 Suitability to Transfer. The Air Force has issued a Finding of Suitability to Transfer (FOST) dated August 24, 2004, as required to permit transfer of the Property. The FOST indicates the intended reuse of the Parcel is industrial and it is suitable for transfer. The Department and the Regional Water Board concur on the conclusions in the FOST and agreed the parcels described in exhibits A and B are suitable for transfer.

## ARTICLE II

### DEFINITIONS

2.01 Department. "Department" means the Department of Toxic Substances Control and includes any successor agencies, if any.

2.02 Regional Water Board. "Regional Water Board" means the Regional Water Quality Control Board, Central Valley Region, and includes any successor agencies, if any.

2.03 Covenantor. "Covenantor" means the City of Atwater.

2.04 Owner. "Owner" means the Covenantor and all successors in interest to the Covenantor, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.05 Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal right to occupy any portion of the Property.

## ARTICLE III

### GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as Restrictions), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: a) runs with the land pursuant to H&SC Section 25355.5(a)(1)(c), Civil Code Section 1471, and California Code of Regulations (CCR), Title 22, Section 67391.1; b) inures to the benefit of the State and passes with each and every portion of Property; c) is for the benefit of and is enforceable by the State; and d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding upon Owners and Occupants. Pursuant to H&SC Section 25355.5(a)(1)(c), this Covenant binds all Owners and Occupants of the Property, their heirs, successors, and assignees, and their agents, employees, and lessees. Pursuant to Civil Code Section 1471(b), the Owner and all successive owners of the Property are expressly bound hereby for the benefit of the State.

3.03 Written Notice of Release of Hazardous Materials. Prior to the sale, lease or sublease of the Property, of any portion thereof, or the execution of a license or easement on the Property, the owner, lessor, or sub-lessor shall give the buyer, lessee, or sub-lessee notice that hazardous materials are located beneath the Property as required by H&SC Section 25359.7.

3.04 Accompaniment to Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases and subleases for any portion of the Property.

3.05 Conveyance of Property. The Owner shall notify the Department and Regional Water Board no later than thirty (30) days after conveying any ownership interest in the Property (excluding short-term rentals and leases, mortgages, liens and other non-possessory encumbrances). The Department and Regional Water Board shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed conveyance, except as provided by law.

3.06 Monitoring and Implementation. Pursuant to the CB ROD, part 2, the Air Force will monitor and report on the status of the groundwater plume(s). The monitoring and reporting requirements include the following:

- (a) The disposition of well permit applications submitted to Merced County for proposed well locations on the Property;
- (b) Any prohibited activities, as described in Section 4.01 of this Covenant, observed by or reported to the Air Force, Covenantor or owner during the course of the review.

If the Air Force does not fulfill these requirements, the Owner must provide an annual report on requirements 3.06 (a) and (b) above.

3.07 Costs of Administering this Covenant. The Department and the Regional Water Board have incurred and will in the future incur costs associated with the administration of this Covenant. Pursuant to California Code of Regulations, Title 22, Section 67391.1(h) and Water Code section 13304, the Department's and the Regional Water Board's costs associated with the administration of this Covenant must be paid.

## ARTICLE IV

### RESTRICTIONS

4.01 Prohibited Activities. The following activities are prohibited on the Veteran's Park parcel as depicted in Exhibit B:

- (a) Construction of groundwater wells for injection or extraction on the Property,
- (b) Any land use that would restrict remedial investigation activities, remedial actions, or long-term maintenance and operation of the groundwater remedy,

- (c) Destruction or disturbance of the existing or future groundwater monitoring wells or other parts of the groundwater extraction and treatment systems, and
- (d) Any other activity on the Property that would interfere with or adversely affect the groundwater remedy, or result in the creation of a groundwater recharge area (e.g. unlined surface impoundments or disposal trenches). Normal landscaping and irrigation activities within the Property including routine irrigation practices are not prohibited activities.

4.02 Notification of Discovery of Activities Affecting the Groundwater Remedial Action or Associated Monitoring Systems. The Owner or Occupant shall notify the Department, the Regional Water Board and U.S. EPA of the discovery of any activities interfering with or adversely affecting the groundwater remedy and associated monitoring systems. The Owner or Occupant shall provide the notification in accordance with Section 7.04 within seven (7) working days after the discovery of the activity and shall include information regarding the type of activity, date of the activity, and location of the activity on the Property.

4.03 Access. The U.S. EPA, the Department, Regional Water Board, their contractors and agents shall have reasonable right-of-entry and access to the Property for inspection, monitoring, testing, sampling, installation and monitoring of remedial systems, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department, the Regional Water Board, U.S. EPA, and the Covenantor in order to protect the public health and safety and/or the environment and oversee any required activities.

## **ARTICLE V**

### **ENFORCEMENT**

5.01. Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, or the Regional Water Board to require that the Owner modify or remove any improvements (Improvements herein shall mean all buildings, roads, driveways, and paved parking areas, water wells, and surface impoundments constructed or placed upon any portion of the Property in violation of the Restrictions). The Department or the Regional Water Board may enforce violations of the Covenant in accordance with applicable law.

## ARTICLE VI

### VARIANCE, TERMINATION AND TERM

6.01 Variance. Covenantor, Owner, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233. The Department shall receive the concurrence of the Regional Water Board before any such variance is effective.

6.02 Termination. Covenantor, Owner, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25234. The Department shall receive the concurrence of the Regional Water Board before any such termination is effective.

6.03 Term. Unless ended in accordance with the termination paragraph above, by law, or by the Department and the Regional Water Board in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

## ARTICLE VII

### MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 State of California References. All references to the State of California, the Department, and the Regional Water Board include successor agencies/departments or other successor entity(ies) and delegated agencies.

7.03 Recordation. The Covenantor shall ensure that this Covenant, with all referenced Exhibits, will be recorded in the County of Merced immediate following the recording of a deed transferring the Property from the Air Force to another owner.



7.04 Notices. Whenever any person gives or serves any Notice (Notice as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective:

1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or 2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To City:	Mayor City of Atwater 750 Bellevue Road Atwater, California 95301
To Department:	Anthony J. Landis, P.E. Chief, Northern California Operation Office of Military Facilities Department of Toxic Substances Control 8800 Cal Center Drive Sacramento, California 95826
To Regional Water Board:	Pamela C. Creedon Executive Officer Regional Water Quality Control Board Central Valley Region 11020 Sun Center Drive, #200 Rancho Cordova, California 95670-6114
To U.S. EPA:	Kathleen Johnson Chief, Federal Facilities Cleanup Branch Superfund Division U.S. Environmental Protection Agency Region IX 75 Hawthorne Street San Francisco, California 94105-3901

Any party may change its address or the agency function to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any provision of this Covenant is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Attachments. All attachments referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.07 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.08 Statutory References. All statutory references include successor provisions.

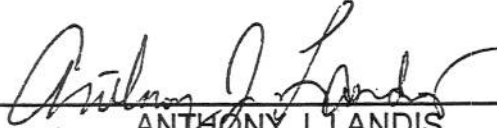
7.09 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

{Signatures follow}



IN WITNESS WHEREOF, the DEPARTMENT OF TOXIC SUBSTANCES CONTROL,  
STATE OF CALIFORNIA has caused these presents to be executed on this 12<sup>th</sup> day  
of December, 2006.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL



ANTHONY J. LANDIS  
Chief  
Northern California Operations  
Office of Military Facilities

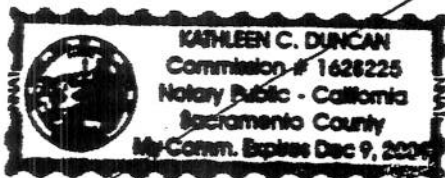
ACKNOWLEDGMENT

STATE OF CALIFORNIA)  
) SS  
County of Sacramento

On December 12, 2006 before me, Kathleen C. Duncan, a Notary Public,  
personally appeared \* Anthony J. Landis known to me to be the person whose name is subscribed to the  
within instrument, and acknowledged to me that he/she executed the same in his/her  
authorized capacity, and that by his/her signature on the instrument, the entity on behalf  
of which he/she acted executed the instrument.

\* Anthony J. Landis

Kathleen C. Duncan  
Notary Public



# ACKNOWLEDGMENT

STATE OF CALIFORNIA

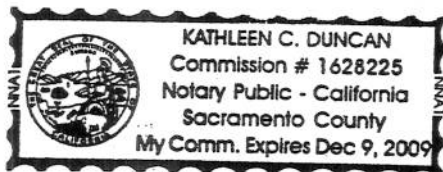
COUNTY OF Sacramento

On December 12, 2006 before me Kathleen C. Duncan  
(Name, Title of Officer)

personally appeared Anthony J. Landis  
personally known to me (or ~~proved to me on the basis of satisfactory evidence~~) to  
be the person(s) whose Name(s) is/~~are~~ subscribed to the within instrument and  
acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~  
authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed  
the instrument.

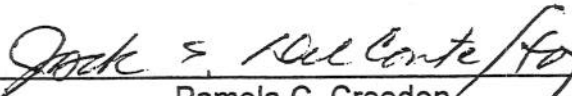
WITNESS my hand and official seal.

Kathleen C. Duncan  
(Signature of Notary Public)



IN WITNESS WHEREOF, the CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, STATE OF CALIFORNIA has caused these presents to be executed on this 13<sup>th</sup> day of December, 2006.

**CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD**



Pamela C. Creedon  
Executive Officer

California Regional Water Quality Control Board, Central Valley Region

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA)

) SS

County of Sacramento

On December 13, 2006 before me, Wendy J. Christensen a Notary Public, personally appeared, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity on behalf of which he/she acted executed the instrument.



  
Notary Public

ACKNOWLEDGMENT

STATE OF CALIFORNIA

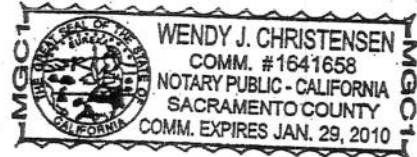
COUNTY OF Sacramento

On 12/13/06 before me, Wendy J. Christensen  
(Name, Title of Officer)

personally appeared Jack E. Del Conte  
personally known to me (or proved to me on the basis of satisfactory evidence) to be  
the person(s) whose Name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Wendy J. Christensen  
(Signature of Notary Public)



IN WITNESS WHEREOF, the CITY OF ATWATER has caused these presents to be executed on this 17th day of January, 2007.

**CITY OF ATWATER**

Carol Joan Faul  
City of Atwater

Title: MAYOR, CITY OF ATWATER

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF MERCED

On Jan. 17, 2007 before me,  
Annette Heikkila, Notary Public

(Name, Title of Officer)

Personally Carol Joan Faul appeared

Personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose Name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Annette Heikkila  
(Signature of Notary Public)



EXHIBIT A

LEGAL DESCRIPTION  
FOR PARCEL C-1  
Castle Veteran's Park

All that portion of Section 5 in Township 7 South, Range 13 East, Mount Diablo Base and Meridian, in the County of Merced, State of California, bounded and described as follows:

Beginning at a point 743.6 feet East and 30 feet South of the Northwest corner of said Section 5; thence South to a point 1170.4 feet South of the North line of said Section 5; thence at right angles West 743.6 feet to the West line of said Section 5; thence North along the West line of said Section 5 to a point 30 feet South of the Northwest corner thereof; thence East 742.6 to the place of beginning.

Excepting the West 60 feet of the above described land, being a strip of land conveyed to County of Merced for Buhach and Gracey Road, by deed from R. Gracey, dated November 18, 1896, and recorded in Volume 34 of Deeds at Page 368, Merced County Records.



# EXHIBIT B

